

EXHIBIT B

MAY 4 2007
 ALAN SLATER, Clerk of the Court
 BY: [Signature] TOMAS, DEPUTY

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1 C. Opposition to parole was expressed by the Orange County District
2 Attorney's Office.

3 II.
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5 Petitioner seeks to vacate the Board of Parole Hearings adverse decision
6 claiming the Board violated his right to due process by finding him unsuitable for parole
7 where there is no reliable evidence petitioner constitutes a current risk to public safety if
8 released on parole.

9 III.
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11 Preliminarily, the Court rejects petitioner's suggestion that the appropriate
12 standard of review should be by a preponderance of the evidence. Administrative
13 decisions on parole suitability made by the Board of Parole Hearings are subject to
14 limited judicial review under the some evidence standard of review. (*In re Rosenkrantz*
15 (2002) 29 Cal.4th 616, 654.) This Court, as are all courts in this state, is bound by the
16 law as established by the California Supreme Court on this issue. (*Auto Equity Sales,*
17 *Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

18 The petition does not set forth a meritorious basis for habeas corpus relief. The
19 available record contains an adequate evidentiary basis for each of the Board's three
20 findings. The circumstances of the commitment offense justify the Board's
21 characterization of the same as a cruel, callous, dispassionate, and calculated act.
22 (See, Pen. Code, § 3041(b); Cal. Code of Regs., tit. 15, § 2402(b) and (c)(1)(B)(D).)

23 In 1990, petitioner and the victim had a tumultuous marital relationship and had
24 been separated for several months. Petitioner harassed the victim and threatened to kill
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1 her on multiple occasions. As a result, the victim, who was five months pregnant,
2 secured a restraining order to protect her from petitioner.

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4 On October 30, 1990, petitioner confronted his estranged wife outside a Kaiser
5 Permanente Medical Center. Petitioner was carrying a long white box purportedly
6 containing a birthday gift for the couple's daughter. Unbeknownst to the victim, the box
7 contained a loaded rifle. Petitioner convinced the victim to give him a ride to another
8 part of the Kaiser facility where petitioner was supposedly working. While inside the
9 victim's vehicle, petitioner produced the loaded rifle. An altercation ensued leading to
10 the firing of two shots one of which struck petitioner in the leg. The victim exited the
11 vehicle running towards the medical building. Petitioner caught up to the victim
12 shooting her in the back of the head. Petitioner nudged the wounded victim with his foot
13 prior to fleeing the scene. The victim survived the attack but suffered a broken jaw and
14 permanent hearing loss in her left ear.
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17 In addition to the circumstances of the commitment offense, the Board
18 reasonably relied on petitioner's most recent psychological assessment to find him
19 unsuitable for parole. Though petitioner does not suffer from a mental disorder and his
20 abuse of methamphetamine is in institutional remission, Dr. R. Talbott essentially found
21 that petitioner has limited insight on the effect of his crime and opines that it is presently
22 unclear whether petitioner can be safely released on parole. The doctor concludes by
23 essentially stating that further progress must be achieved before it is reasonable for
24 petitioner to be released on parole. In view of this information, the Board did not abuse
25 its discretion by concluding that Dr. Talbott's assessment is not completely supportive of
26 his release on parole.
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1 An abuse of discretion is also not evident in the Board's decision to cite the
2 Orange County District Attorney's opposition to petitioner's release on parole as a basis
3 for its determination. The Board is statutorily required to consider the views of the
4 People's representative when evaluating the parole suitability of a particular inmate.
5 (See, Pen. Code § 3041.7; § 3046(c).)
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7 The Board recognized petitioner for his favorable institutional record that includes
8 no misconduct, extensive educational/vocational programming, and realistic parole
9 plans. Nevertheless, the Board concluded that petitioner's favorable prison record did
10 not outweigh those circumstances establishing unsuitability for release on parole. The
11 record reflects consideration of petitioner's eligibility for parole and an adequate
12 evidentiary foundation for the Board's decision. No abuse of discretion is established.
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14 In reviewing a parole suitability determination made by the Board of Parole
15 Hearings, a court views the record in the light most favorable to that determination.
16 (See, *In re Morrell* (2002) 102 Cal.App.4th 280, 301.)
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18 Courts may review the factual basis of a decision of the Board denying parole in
19 order to ensure that the decision complies with due process of law. However, courts
20 may only inquire whether some evidence in the record before the Board supports the
21 decision to deny parole, based upon the factors specified by statute and regulation. (*In*
22 *re Rosenkrantz, supra*, 29 Cal.4th at 658.)
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24 The precise manner in which the specified factors relevant to parole suitability
25 are considered and balanced lies within the discretion of the Board of Parole Hearings,
26 but the decision must reflect an individualized consideration of the specified criteria and
27 cannot be arbitrary or capricious. It is irrelevant that a court might determine that the
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1 evidence in the record tending to establish suitability for parole far outweighs evidence
2 demonstrating unsuitability for parole. As long as the decision reflects due
3 consideration of the specified factors as applied to the individual prisoner in accordance
4 with applicable legal standards, the court's review is limited to ascertaining whether
5 there is some evidence in the record that supports the decision. (*In re Rosenkrantz*,
6 *supra*, 29 Cal.4th at 677.)

8 IV.

9 To the extent petitioner contends that he has already served the legislatively
10 prescribed term of imprisonment for his offense, such contention is without merit. An
11 indeterminate sentence is in legal effect a sentence for the maximum term of life
12 (*People v. Dyer* (1969) 269 Cal.App.2d 209, 214.) unless an inmate is found suitable for
13 parole at an earlier point in time.

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15 Equally without merit is petitioner's suggestion that inmates such as him are
16 improperly penalized for declining to discuss the commitment offense with the parole
17 board as a result of an underground policy to uniformly deny parole to such inmates.
18 Petitioner cites no concrete evidence to support his conclusory claim. More importantly,
19 the record of petitioner's own hearing does not reveal any evidence supporting the
20 notion that petitioner was found unsuitable for parole based on petitioner's decision not
21 to discuss the commitment offense with the Board.
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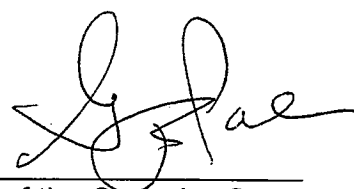
V.

No prima facie case for relief is established. An order to show cause will issue only if petitioner has established a prima facie case for relief on habeas corpus.

(*People v. Romero* (1994) 8 Cal.4th 728, 737; *In re Clark* (1993) 5 Cal.4th 750, 769, fn. 9.)

The petition for writ of habeas corpus is DENIED.

Dated: 5/14/07



Judge of the Superior Court